IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
APPEAL NO.472 OF 2006
IN
NOTICE OF MOTION NO.62 OF 2005
IN
INSOLVENCY NO. N/49 OF 2005
WITH
NOTICE OF MOTION 3437 OF 2006

WITH
APPEAL NO.473 OF 2006
IN
NOTICE OF MOTION NO.63 OF 2005
IN
INSOLVENCY NO. N/50 OF 2005
WITH
NOTICE OF MOTION 3443 OF 2006

Bhupen Champaklal Dalal ..Appellant.
Vs.
Satish Tandon & Ors. ..Respondents.

....

Shri S.R. Mishra for the Appellant.
Shri K.G. Mhatre i/b Doijode & Associates for the Respondents.

....

CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

7th February, 2007.

P.C. :

1. Heard.

2. The Appellant challenges the order dated 18th April, 2006 passed in Notice of Motion 62 of 2005 in Insolvency Notice 49 of

2005 and Notice of Motion 63 of 2005 in Insolvency Notice 50 of 2005. The only ground on which the impugned order is sought to be challenged is that the order passed by the Apex Court on 7th March, 2006 in I.A. Nos.7-9, 10-12 in Civil Appeal No 296-298 of 2003 permitted continuation of insolvency proceedings in Notice of Motion 62 of 2005 and 63 of 2005 and did not permit final disposal thereof and yet the Learned Single Judge has disposed of the Notices of Motion.

3. The contention is totally contrary to the order passed by the Apex Court. The order passed by the Apex Court clearly reads thus:

> "Put up this matter on 23.3.2006.
>
> In the meantime, the insolvency proceedings may continue but the final order may not be passed therein."

The order apparently discloses that though the insolvency proceedings are not to be finally disposed of, it does not prevent disposal of a Notice of Motion taken out in such proceedings. The contention sought to be raised based on the order of the Supreme Court is therefore totally contrary to the order itself and hence there is no case made out for interference in the impugned order on the

said ground.

4. The Learned Single Judge is justified in observing that in the absence of any stay being granted by the Supreme Court, mere filing of an application for setting aside the order or decree would not by itself automatically empower the Appellant to get the Motion being made absolute as well as has rightly observed that mere addressing of letter by the judgment creditor seeking distribution of assets under the said Act would not entitle the judgment debtor to set aside the insolvency notice. There is no case made out for interference in appeal. The Appeal is therefore dismissed.

5. In view of the dismissal of the Appeals, Notice of Motion 3437 of 2006 and Notice of Motion 3443 of 2006 do not survive and stand disposed of.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)